IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21/09/2004

CORAM

THE HONOURABLE MR. JUSTICE V. KANAGARAJ

W.P. No.7037 of 1997

The Kothur Primary Agricultural
Cooperative Bank Ltd.,
rep. by its President .. Petitioner

-Vs-

1. G.Sriramulu

2. The Deputy Registrar of
Cooperative Societies,
Tirupathur.

3. The Cooperative Tribunal
(Principal District Judge),
N.A. Dist. Vellore .. Respondents

Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For Petitioner : Mr.V.Subramani

For Respondent : Mr.N.G.R.Prasad for
M/s.Row & Reddy for R.1
Mrs.Malarvizhi,
Govt. Advocate for R2.

:O R D E R

Writ Petition has been filed praying to issue a Writ of
Certiorari calling for the records of the third respondent in C.T.A. No.41 of
19 94 dated 11.10.1996 and quash the same.

2. The case of the petitioner is that the petitioner Bank has
filed a claim petition in ARC No.149 of 1990-91 before the second respondent
herein as against the first respondent, who was the Secretary of the said Bank
and six others for recovery of Rs.72,990.06 towards the shortage in stocks,
loss caused in the sale of empty gunny bags at a lower price, shortage of
empty gunny bags and loss incurred by way of payment of interest for belated
payment to North Arcot Wholesale Marketing Society. However, the second
respondent while holding that one C.Mani, who was the third defendant to the

said proceedings, has admitted the guilt and claim and a resolution was also passed to the effect of irregularities committed by the said C.Mani, has dismissed the said claim petition as against the first respondent herein. Aggrieved, the petitioner herein preferred an appeal in C.T.A.No.41/1994 before the third respondent herein and the same also having been dismissed, the petitioner has come forward to file this writ petition.

3. Today, when the above matter has been taken up for hearing, in the presence of the learned counsel for the respondent, the learned counsel for the petitioner would submit that the first respondent was the Secretary at the relevant point of time; that the resolution dated 27.2.1987 passed by the then Special Officer fixing the liability on C.Mani, Attender is malafide, illegal and without jurisdiction; that no proper enquiry was held; that the resolution cannot be true because the defalcation has occurred after the date of resolution because it is anti-dated; that the claim

is to the tune of Rs.72,000/= whereas the resolution says that it is Rs.18,080/=; that the then Special Officer, in collusion, has fabricated the documents; that the resolution passed has been tampered with.

4. In reply, the learned counsel appearing on behalf of the first respondent would submit that on 27.2.1987 the Board entrusted the shop with the said C.Mani to take care of the shop; pursuant to that, in 1988, there were shortages, he was suspended and he wound up the responsibility; that the order was passed finding him guilty; that the Society filed an appeal in ARC No.149/90 after three years wherein seven employees were made parties including the said C.Mani and the first respondent herein; that the loss has occurred at the time when the first respondent herein went on leave and the said C.Mani also has confessed it; that the second respondent passed an order holding the said C.Mani responsible; but that order was not challenged by the said Mani; that the petitioner filed CTA No.41/94 without making C.Mani and rest of them as parties before the second respondent and only the first respondent was made a party to the appeal, which was dismissed confirming the order of the second respondent; that the writ petition suffers for non-joinder of parties.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioner and the respondents as well this Court is able to see that the claim of the petitioner-Society/Cooperative Bank that on account of the shortage that occurred in the stocks in the sale of empty gunny bags at a lower price and on account of the payment of interest for belated payment to the wholesale marketing society and therefore, the first respondent being the Secretary of the petitioner/Cooperative Bank at the relevant point of time, the petitioner proceeded against the first respondent for the claim to the tune of Rs.72,000/- and seven employees were made parties including one C.Mani, who was directly in charge of the sale of empty bags and the account for the same and therefore, the second respondent held the enquiry found the said Mani was responsible for the shortage of empty bags and the loss incurred by way of payment of interest to the wholesale agricultural society and that the said C.Mani when admitted the guilty and the claim and a resolution was

passed to the said admission and hence dismissed the claim of the petitioner as against the first respondent, aggrieved against the appeal preferred in CTA No.41/94 before the third respondent also having come to be dismissed, the petitioner has come forward to file the above Writ Petition on certain grounds as brought forth in the grounds of the petition.

6. On perusal of records, this Court is able to find that entries are effected in the Minute Books for the year 1983 - 88 as it could be seen at page 221, wherein as per the resolution dated 27.2.1987, in the presence of the Special Officer, it has been resolved holding that the said C.Mani, Salesman employed in the society was responsible for the loss occasioned to the society in the sale of fertiliser and other items. Again at page 248 to the same Minute, yet another resolution has been passed on 28.8.1987 in the presence of the Special Officer wherein also, it is found that the said C.Mani has misappropriated the sum of Rs.18,080.58 on account of the deficit fund and that he was also found to have been absent from duty from 24.8.1987 to 28.8.19 87 resulting the said C.Mani having been placed under suspension as proceeded against.

7. Absolutely nothing is either seen in the Minutes or brought forth by any other valid evidence to the effect that the first respondent had had any hand in the shortage or loss, mismanagement and in fact, the first respondent was not at all present during those relevant days on which the occurrence is alleged to have taken place and since the said C.Mani being the salesman in full charge of the assignment was only responsible for the loss occasioned to the society in the sale of items and since the said C.Mani also admitted the guilty without an iota of evidence, the first respondent had been dragged into the controversy without any authenticated proof to establish the charge and in fact, the first respondent is absolutely away from the ambit of charge but still the petitioner being heard has been persistently charging the first respondent for having committed the

irregularities for no better cause shown or reason assigned and therefore, it could only be concluded that the petitioner is harping the first respondent for extraneous considerations or at the behest of those who are ill disposed of with the first respondent.

8. It is strange that when the actual delinquent, the salesman C. Mani has admitted the guilty and agreed to compensate the loss, without even making him a party to the proceedings, the petitioner has been levelling the charges as though the first respondent has only committed the offence absolutely bereft of any proof and therefore, it is a glaring case wherein it could only be decided that it is a case of no evidence and hence it only be appropriate to dispose of the above Writ Petition with exemplary costs for having assessed the first respondent without sufficient cause or reason by multiplicity of proceedings levelled against him. However, the petitioner being a Primary Agricultural Cooperative Bank Ltd., it should only be taxing the public funds and hence this Court is not of the view to levy cost against the petitioner and hence the following order:
V.KANAGARAJ, J
In result,

(i) the above Writ Petition is bereft of merit and the same is dismissed as such;

(ii) the order dated 11.10.1996 made in C.T.A No.41 of 1994 by the Special Tribunal for Cooperative is confirmed;

(iii) however, there shall be no order as to costs.

21.9.2004
Index: yes
Internet: yes
gs/asvm
To
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Cooperative Societies,
Tirupathur.

2. The Cooperative Tribunal
(Principal District Judge),
N.A. Dist. Vellore.
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